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CONTENTS

	Page
Origin of the Land and Oil Law Controversy	243
Discussion of the Mexican Land Law of January 21, 1926	244
Questions of Alleged Retroactivity of Sections of the Law	244
The Controversy over the Petroleum Law of December 31, 1925	245
Position of the United States Defined by Secretary Kellogg	246
Mexican Government Denies Retroactivity of Law	247
Status of Vested Rights and Inchoate Petroleum Titles	247
Further Differences between the United States and Mexico	248
Alleged Mexican Engagements at the Conference of 1923	248
The Calvo Clause	248
Possibility of Arbitral Settlement	249
Text of Mexican Petroleum Law	250
Text of Mexican Alien Land Law	251
Text of Last Notes Exchanged between United States and Mexico	252

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The Mexican Land and Oil Law Issue

THE controversy which has arisen between the United States and Mexico over the interpretation of Mexico's alien land law and petroleum law will enter a new phase during January, unless meanwhile some settlement is reached on the points at issue. At the present time the petroleum law is expected to go into effect on December 31, 1926, and the land law on January 21, 1927. On these dates the discussion of American property rights in Mexico which hitherto has been largely theoretic, will become a real issue inasmuch as American and other foreign interests will be required to comply with the provisions of the new laws or run the risk of having their titles confiscated. The latest published note of the State Department, in which Secretary Kellogg said that an "extremely critical situation . . . would inevitably be created if those laws were enacted and enforced in such a manner as to violate the fundamental principles of international law and of equity . . ." indicates the seriousness with which the Coolidge administration views the present situation.

Four outstanding differences have arisen from the recent land and oil laws adopted by the Mexican government to carry out the nationalization provisions of the Constitution of 1917.

First: The alleged retroactivity of the land law.

Second: The alleged retroactivity of the petroleum law and the question of the modification of titles to oil lands acquired prior to May 1, 1917.

Third: The nature of Mexican undertakings at the Conference of Mexico City in May, 1923, preceding recognition by the United States.

Fourth: The Mexican government's insistence that foreign property owners bind themselves not to invoke the support of their governments, but submit themselves to Mexican jurisdiction in all disputes where their property interests are concerned on penalty, if they do invoke the support of their government, of forfeiting their property.

The purpose of this report is to review briefly each of the four points at issue and to present the positions held respectively by

the State Department and the Mexican government as revealed in the published official correspondence. While it is not possible in this report to trace in detail the course of American-Mexican relations during the past fifteen years or the effects of the agrarian revolution which led to the promulgation of the 1917 Constitution, it is essential to include a short statement of events bearing directly on the origin of the present controversy.

HISTORICAL SURVEY

The origin of the present differences between the United States and Mexico lies in the provisions of Article 27 of the Constitution of 1917. One of the objects of the revolution of 1910 was the extension of small land holdings through the correction of the system under which the land and natural resources of the country had become the property of a relatively small class of large land holders. The return of the communal lands, or *ejidos*,* has been the task of every administration since the revolution. The first attempt was made in 1915 when President Carranza issued a provisional agrarian decree annulling illegal alienation of lands, but it was not until 1917 that this measure was given constitutional status. Article 27 of the Constitution vested in the nation ownership of lands and waters comprising the national territory and sanctioned the division of the large land estates. It also nationalized petroleum deposits and made provisions relative to the acquisition of agricultural property by foreigners and to religious and educational reforms.

Since the adoption in 1917 of the present Constitution relations with Mexico have been strained almost continuously. President Carranza's decree attempting to put into operation the provisions of Article 27 of the Constitution immediately elicited protests from the State Department. The fall of Carranza and the short administration of de la Huerta, who was refused recognition by the United States, did not have the effect of materially relieving the existing tension between the two governments. To the Obregon Government which followed that of de la

Huerta in December, 1920, the United States turned with proposals calculated to normalize relations between the two countries. Prior to 1923 Secretary Hughes had tried without success to secure a binding engagement on the part of the Mexican government guaranteeing American property in Mexico against confiscation.

In July 1922 Secretary Hughes in a communication to Chargé Summerlin had opened the way to further negotiations while severely criticising the situation in Mexico as it affected the rights of foreigners. In an answering note of March 31, 1923, Foreign Minister Pani assured Secretary Hughes that Mexico intended to respect the rights legally acquired prior to the date of the Constitution of 1917, pointing to the decisions of the Supreme Court of Mexico in the five *amparo** cases which declared in an unmistakable manner the non-retroactive character of Article 27 of the Constitution in that part relative to petroleum.

RECOGNITION OF PRESIDENT OBREGON, 1923

On May 2, 1923, President Harding "in an effort to reach an understanding with Mexico respecting the questions at issue" appointed Charles Beecher Warren and John Barton Payne as commissioners to meet representatives of the Mexican government. The chief point at issue was the safeguarding of American property rights in Mexico, especially as against confiscatory application of the provisions of the Mexican Constitution of 1917. The questions arising from this issue related to:

1. The restoration of or proper reparation for lands owned by American citizens prior to May 1, 1917.
2. Guarantees against confiscation of such subsoil rights as belonged to the owners of the surface prior to 1917 where the land was owned by American citizens.

The United States-Mexican Commission met at Mexico City on May 14, 1923. After prolonged discussion of the questions raised by the provisions of Article 27 of the Constitution relative to the property rights of foreigners, Claims Commissions were created to adjudicate all claims of citizens of the

* *Ejidos* common lands, a quantity of which had been taken from the villages.

* See note p. 246.

United States for losses suffered in Mexico. The subsequent recognition of President Obregon's government in August 1923, led to a period of cordiality between the United States and Mexico lasting until last year.

In December 1925 the organic laws governing the execution of Article 27 of the Constitution were passed by the Mexican Congress. The publication of these laws, known respectively as the Alien Land Law and the Petroleum Law, regulating Article

27 of the Mexican Constitution of 1917, again brought the question of American property interests in Mexico up for discussion. The State Department in a series of notes addressed to the Mexican Minister for Foreign Affairs, pointed out that these laws contained articles of a character which seemed to impair the property rights of Americans in Mexico. The Mexican Government in replying to the notes of the American Secretary of State, asserted in effect that there existed no grounds for American anxiety.

DISCUSSION OF THE MEXICAN LAND LAW OF JANUARY 21, 1926

The principal issue raised by the Mexican land law is: the question as to whether the law is retroactive in its effects upon vested rights acquired prior to the promulgation of the law.

The agrarian provisions of the Constitution of 1917 gave constitutional status to the earlier agrarian decrees of January 6, 1915. These provisions gave sanction to the division of landed estates. Further agrarian measures were promulgated in December 1920, December 1921 and April 1922.

The Mexican Foreign Minister, in a communication on March 31, 1923 explained the difficulties arising out of the re-distribution of lands in Mexico:

"This administration succeeded in quelling such center of rebellion and in reestablishing peace throughout the national territory, not so much by military force and bloodshed as by the quick application of agrarian laws. Nobody doubts that, facing such dilemma, the adopted solution was the most humanitarian and economic one—in spite of the inevitable damage to individual national and foreign agricultural interests."

The American Commissioner at the conference of 1923, declared that

"under the rules of international law there can be no taking of lands, water rights or other property of American citizens, in whatever form their interests may be held, legally acquired prior to May 1, 1917, under the laws of Mexico and the Constitution of 1857, without indemnification in cash at the time of the taking for the just value thereof."

and added that the United States cannot recognize any right of Mexico under the terms of any law to pay in bonds or

to compel American citizens to accept bonds as compensation for land, and that the indemnity which the Government of the United States believes Mexico should pay for these lands is their just value in cash.

The Mexican Commissioners declared that although excesses may have been committed, the National Government had always endeavored by all means within its power to comply with the law in all cases and that the bonds paid by way of indemnity would be redeemed, if a special loan in order to pay in cash all the indemnities for the expropriation of lands were concluded. They also promised restitution of property confiscated or wrongfully taken from their owners during the revolution and to have all claims settled by the Mixed Claims Commission.

THE QUESTION OF RETROACTIVITY

The land law regulating Article 27 of the Mexican Constitution was promulgated January 21, 1926. The prohibition of aliens' acquiring land or being shareholders in Mexican companies owning land within 100 kilometers of the frontiers or 50 kilometers of the coasts or being a shareholder in Mexican companies which may acquire such ownership in the prohibited zones contained in the Constitution was amplified in Article 1 of the Organic Law. Secretary Kellogg inquired* whether this law was to be given retroactive effect. Minister Saenz in his answer declared that Article 1 of the land law was not retroactive and it did not refer to an

* Note of March 1, 1926.

alien with property rights as described by Secretary Kellogg.

Article 2 of the land law prescribes that all aliens agree before the Department of Foreign Relations to consider themselves nationals in respect to any property rights which they may hold. Again Secretary Kellogg inquired of Minister Saenz whether this law was to have retroactive effect with reference to aliens "who prior to the promulgation of law had acquired an interest in a Mexican Company." Minister Saenz assured* Secretary Kellogg that Article 2 required no compliance by aliens "who prior to the promulgation of the law had acquired an interest in a Mexican company."

Article 3 of the land law specifies that a permit shall not be granted to aliens owning a majority interest in Mexican companies owning rural property for agricultural purposes. Minister Saenz denied that Article 3 was retroactive and stated that "an alien who before the promulgation of the law held an interest in a Mexican company does not need to apply for any permit."

It is provided in the land law that the present owners possessing rights legally acquired prior to the going into effect of the law and contrary to the provisions of the new law shall hold them until their death, in the case of individuals, and for ten years, in

the case of corporations, after lapse of which the interest in question will have to be disposed of under penalty of forced sale. Minister Saenz held that the articles containing these provisions were "not retroactive because the rights acquired by aliens prior to the going into effect of the law would be conserved by the present owners until their death. . . ."

Finally the seventh article requires that:

"Aliens who may possess any of the rights which are the subject matter of this law, and which were acquired before the going into effect of the law, shall make a declaration (of their rights) before the Department of Foreign Relations within the year following the date of the promulgation of the present law. If this is not done it will be considered that the acquisition was made subsequent to the promulgation of this law." (And therefore subject to its provisions.)

Minister Saenz pointed out that aliens only have to make a declaration, which declaration must be a statement of such rights previously acquired.

The Mexican land law, like the petroleum law, requires foreigners to waive their nationality in so far as Mexican-owned property is concerned. This controversial point was discussed by Secretary Kellogg in connection with each of the laws, and is taken up in detail later in this report.

THE CONTROVERSY OVER THE PETROLEUM LAW OF DECEMBER 31, 1925

Article 27 of the Mexican Constitution of 1917 containing the new dispositions with respect to the rights of foreigners to petroleum deposits in Mexico marked a complete departure from regulations previously governing these rights. Under the old mining codes of 1884, 1892 and 1909, owners of the surface, whether natives or foreigners, were given the right to exploit subsoil deposits of petroleum as owners and without special concession from the Mexican government.** The deposits of mineral fuels were "the exclusive ownership of the owner of the soil." The rights acquired by for-

eigners under the provisions of the old laws were complete and not subject to geographic limits.

The change in the Constitution consists primarily of the extension of the doctrine of nationalization of subsoil deposits to petroleum and other substances. "In the nation," Article 27 provides, "is vested direct ownership of all minerals or substances . . . and petroleum and all hydrocarbons, solid, liquid or gaseous."

The nation's ownership of its natural resources was defined as "inalienable," but authorization to exploit the subsoil deposits might be granted in concessions to private parties or corporations organized under the laws of Mexico.

* Note of March 27, 1926.

** Article 10, Mining Law of 1884; Article 4, Mining Law of June 4, 1892; Article 2, Mining Law of Nov. 25, 1909. Under these laws certain minerals could not be exploited without concession. Under the law of 1909 these minerals were declared the direct property of the nation.

"Only Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership in lands, waters and their appurtenances, or to obtain concessions to develop mines, waters or mineral fuels in the Republic of Mexico. The Nation may grant the same right to foreigners, provided they agree before the Department of Foreign Affairs to be considered Mexicans in respect to such property, and accordingly not to invoke the protection of their governments in respect to the same, under penalty, in case of breach, of forfeiture to the Nation of property so acquired. Within a zone of 100 kilometers from the frontiers, and of 50 kilometers from the sea coast, no foreigner shall under any conditions acquire direct ownership of lands and waters."

KELLOGG DEFINES U. S. POSITION

The changes introduced by the Constitution in the future exploitation of subsoil deposits are not the subject of criticism by foreign powers. The State Department in its correspondence with the Mexican government did not in fact deny the right of Mexico to make new laws governing the acquisition of property in the future. "This right," wrote Secretary Kellogg in a recent communication, "cannot be questioned by any other state. If Mexico desires to prevent the future acquisition by aliens of property rights of any nature within its jurisdiction this government has no suggestion whatever to make."* In recognizing this right of the Mexican government the State Department, however, took care to point out that the retroactive effect of any such law by damaging the rights of foreigners acquired prior to its promulgation would put it under the "positive duty to make representations and efforts to avoid such action."*

The Mexican Constitution of 1917 had provided in Article 14, that "no law shall be given retroactive effect to the prejudice of any person whatsoever." On the other hand, Article 27 nationalized petroleum deposits previously regarded as the property of the owner of the surface. Five famous cases before the Supreme Court of Mexico in 1921 declared that Paragraph 4 of Article 27 of the Constitution of 1917 was not retroactive. The Petroleum law of December 31, 1925, in

providing, as did the Constitution, for the nationalization of petroleum deposits and for the granting of petroleum concessions to Mexicans and foreigners under certain conditions, obliges the owners of vested rights secured prior to May 1, 1917 to exchange their titles for concessions of not more than fifty years duration.

TITLES UNDER PETROLEUM LAW

The Petroleum Law of 1925 provides moreover a series of definitions and distinctions as well as specific requirements affecting holders of oil land titles.

"The following rights," it reads, "will be confirmed without any cost whatever and by means of concessions granted in conformity with this law:

1. those arising from lands in which works of petroleum exploitation were begun prior to May 1, 1917;
2. those arising from contracts made before May 1, 1917, by the surface owner or the successors in title for the express purpose of exploitation of petroleum. . . ."

It is around these laws that the most recent and most critical discussion has centered. The following paragraphs summarize the position of the State Department and the Mexican Government in regard to American property rights in Mexico.

The State Department has held since the first discussion of the petroleum law that each of these requirements of the Mexican law are in violation of the rights of American citizens on the ground that the provisions are retroactive and affect the scope and value of properties to which titles were obtained prior to the promulgation of the laws in question.

The Mexican Government has denied that there is any retroactivity in the present law. It held that both the Constitution and the five *amparo* cases before the Supreme Court of Mexico in 1921* bore out this contention prior to the promulgation of the present law.

* The principles brought out by these cases were: "that under the facts of the concrete case, the basis of this suit, the issuance of a title to Cortina constituted a retroactive application of the decree of August 8, 1918, and a dispossession of the vested rights of exploration and exploitation without due process, violating thereby the guarantees set forth in Article 14 and paragraph 2 of Article 27 of the Constitution," in short, upholding Article 14 which prohibits the application of any law retroactive in effect and to the prejudice of any person whatsoever.

* Note of Secretary Kellogg to Minister Saenz, Jan. 28, 1926.

MEXICO DENIES RETROACTIVITY

At the Conference of 1923, the Mexican commissioners denied any desire or intention on the part of their government to impair the rights of foreigners having titles legally acquired prior to 1917.

"It is the duty of the Federal Executive powers under the constitution to respect and enforce the decisions of the judiciary power. In accordance with such duty the Executive has respected and enforced, and will continue to do so, the principles of the decision of the Supreme Court of Justice in the Texas Oil Company case and four other similar *amparo* cases declaring that paragraph 4 of Article 27 of the Constitution of 1917 is not retroactive. . . ."

The principle of retroactivity was condemned also in the correspondence of the Mexican Foreign Minister who on November 5, 1925, when the petroleum law was under discussion, admitted that in accordance with international law acquired rights may not be harmed. He insisted, however, that if a state respected property rights, it need not respect these rights just as they existed at the time of the acquisition. In another note the Mexican Foreign Minister wrote:

"that a subsequent law may modify a status in law created by a previous law without being retroactive. . . . It is always assumed that a new law is an improvement on the preceding one and the only limitation to be placed on the application of such new law is that it shall not be retroactive, and it is not as long as it does not infringe upon any right that has already been put into effect."

The exposition of the principle of retroactivity in the Mexican correspondence introduces a modifying idea. A law is not retroactive, it is held, "as long as it does not infringe upon any right that has already been put into effect."

DISCUSSION OF VESTED RIGHTS

This modifying clause raises the question as to when and how a vested right is acquired. Nothing in international affairs could be of a more legalistic character than such a discussion. It is here that the greatest divergence between the contentions of the United States and Mexico is to be found.

The Mexican Commissioners at the Conference of 1923 held that a petroleum title is not complete unless it is confirmed by a positive act. Various legal authorities were quoted to support this view, in particular the treatise of Fernando Vega, a Mexican jurist who in 1905 elaborated the doctrine that rights which are granted by law "are not considered as acquired rights. . . . except when they are exercised."

This distinction is based on the existence of "positive acts" prior to 1917 manifesting the intention on the part of the owners of the surface to exploit the subsoil deposits. These full titles are defined in the petroleum law as:

1. Those arising from lands where works of petroleum exploitation were begun prior to May 1, 1917; and
2. Those arising from contracts made prior to May 1, 1917, for express purposes of petroleum exploitation.

STATUS OF "INCHOATE" TITLES

The positive acts enumerated in the petroleum law were regarded by the State Department as considerably less inclusive than the list given by the Mexican Commissioners at the Conference of 1923.* Under the petroleum law where the owner of the surface had performed neither of the required positive acts it is held by the Mexican Government that he possesses merely an *inchoate* title to the subsoil deposits and consequently does not receive the treatment accorded to holders of vested titles under the petroleum law.

The Mexican Government proposes to exchange only vested titles for concessions of fifty years' duration. In apparent contradiction to the statements made by Mexican Commissioners in the 1923 Conference as to the policy of the Mexican Government to grant preferential rights to such persons who had performed no positive acts, Secretary Kel-

* The Mexican Commissioners defined as positive acts at the Conference of 1923, "drilling, leasing, entering into any contract relative to the subsoil, making investments of capital in lands for the purpose of obtaining the oil in the subsoil, carrying out works of exploitation and exploration of the subsoil, and in cases where from the contract relative to the subsoil it appears that the grantors fixed and received a price higher than would have been paid for the surface of the land because it was purchased for the purpose of looking for oil and exploiting same if found; and, in general, performing or doing any other positive act, or manifesting an intention of a character similar to those heretofore described."

logg pointed out: "The law in question seems to give no preferential rights to such owners or persons."* Secretary Kellogg holds each

of these measures retroactive in substance and impairing the legal rights of American citizens in Mexico.

FURTHER DIFFERENCES BETWEEN THE TWO GOVERNMENTS

ALLEGED ENGAGEMENT OF 1923

Considerable attention has been given by the Secretary of State in his notes to Minister Saenz of the Mexican engagement at the Conference of 1923. This conference, as noted above, was called for the purpose of reaching a satisfactory understanding on outstanding points of issue, and preceded the resumption of cordial relations between the two countries.

After the termination of the negotiations, Secretary of State Hughes asked for the approval by President Obregon of the statements set forth in the report of the Commissioners. The Mexican Minister answered that President Obregon "approved the declarations made by the Commissioners."**

"The declarations of the Mexican and of the American Commissioners on that occasion (1923)" wrote Secretary Kellogg on October 20, 1926 "subsequently ratified by an exchange of notes between the two Governments, constituted, in the view of my Government, solemn and binding undertakings which formed the basis and moving consideration for the recognition of the Mexican Government by this Government."

Minister Saenz in his reply took issue with Secretary Kellogg on the question of the binding force of the understanding of 1923.

"I do not know," he wrote on October 27, "the full scope of the words employed by your Excellency and underscored by me: 'That its binding force is recognized,' for, frankly speaking, the Mexican Government can not recognize binding force equivalent to a treaty or a constitutional precept, in the outlines of policy presented by General Obregon through his commissioners, all the more as their declarations and those of the American commissioners did not take the character of a synallagmatic (binding) agreement."

* Note of January 8, 1926.

** See Note of Secretary Kellogg to Minister Saenz, January 28, 1926.

Consequently the agreement arrived at in 1923 was not regarded by the Mexican Government as conditional to recognition.

The controversy between the United States and Mexico over the land and petroleum laws culminating in Foreign Minister Saenz' last note of November 17, 1926, has had no effect upon the Mexican legislation. Unless foreign companies holding titles to oil lands apply for concessions as provided by the law and those having agricultural interests declare their titles before the Department of Foreign Affairs as well as submit themselves to the requirements of that Department relative to foreign diplomatic protection, they will run the risk of disobeying the respective laws and of being deprived of their titles as provided in the laws.

THE CALVO CLAUSE

The provision of the Mexican Constitution which requires all foreigners acquiring lands in Mexico to agree to certain stipulations before the Department of Foreign Affairs, known as the Calvo Clause, has also been the subject of protest by the State Department. This provision has been reaffirmed in the recent petroleum law and as it now stands requires that all foreigners who desire to obtain petroleum concessions must "agree before the Department of Foreign Affairs to be considered Mexicans in respect to such property and agree not to invoke the protection of their governments in respect to the same under penalty, in case of breach, of forfeiture to the Nation of property so acquired."

Secretary Kellogg on January 8, 1926 denied that an American citizen could extinguish the obligation of his Government to protect him in the event of a denial of justice and elaborated the American stand in the note of January 28 as follows:

"Article 2 of the recent land law provides that any alien who may have acquired ownership of agricultural lands, waters or their appurtenances, or concessions for mining. . . . shall agree before the Department of Foreign Relations to consider himself a national of Mexico in respect of his part of the property and shall agree not to invoke in respect thereof the protection of his Government with reference thereto under penalty, in case of failing in the agreement, of defaulting his property to the nation."

"The United States," he continued, "does not admit that one of its citizens can contract by a declaration or otherwise to bind his own Government not to invoke its rights under the rules of international law. Under the rules applicable to intercourse between states, an injury done by one state to the citizens of another state through a denial of justice is an injury done to the state whose national is injured. The rights of his State to extend what is known as diplomatic protection cannot be waived by the individual."

The Mexican reply (February 12, 1926) admitted that an individual cannot prevent the state of which he is a citizen from asserting a certain right that belongs to it, but denied that the Mexican law made such an assertion:

"since that which is required is that the alien shall consider himself a national with respect to the property which may belong to him in a Mexican corporation which he enters, and shall not invoke in regard thereto the protection of his government."

KELLOGG DEFENDS DIPLOMATIC PROTECTION

Secretary Kellogg answering the Mexican rebuttal in his note of March 1, 1926, reasserted that an injury done by one State to a citizen of another through a denial of justice is an injury also to the State whose national is concerned. He added that even though the individual should make a waiver,

"that could not stop his State in case of a denial of justice from extending its right to diplomatic protection or seeking redress in accordance with the principles of international law."

The Mexican reply of October 7, 1926 declares that the right of states to protect their citizens or subjects abroad is unassail-

able; but the exercise of this right is subject to the will of the parties in interest and therefore they may forego its exercise without thereby affecting the right of the State concerned.

Thus the Mexican Government "does not deny that the American Government is at liberty to intervene for its nationals; but that does not stand in the way of carrying out an agreement under which the alien agrees not to be the party asking for diplomatic protection of his Government." On the supposition

"that there may have been a denial of justice, and injury or a wrong done to an alien the matter would be solved by granting the proper reparation without prejudice to the legal sanction attending the infringement of the undertaking that may have been entered into." (The Mexican Government thus reserves the right to enforce the confiscatory or other penalties against an alien appealing to his Government.)

CALVO CLAUSE BEFORE CLAIMS COMMISSION

It may be pertinent in this connection to quote from the decision of the General Claims Commission formed in 1923 "for the adjudication of all claims against Mexico or citizens of the United States for losses or damages." The commission,* interpreting the clause forbidding a foreigner to appeal to his government, pointed out that the question involved the conflict between the "sovereign right of national jurisdiction" on the one hand and the "sovereign right of national protection of citizens" on the other. It was decided that in the case in hand, the true meaning of the clause was that the claimant

"should be governed by those laws and remedies which Mexico had provided for the protection of its own citizens, but this provision did not and could not deprive the claimant of his American citizenship and all that implies. It did not take from him his undoubted right to apply to his own government for protection if his resort to the Mexican tribunals or other authorities available to him resulted in a delay or denial of justice as that term is used in international law."

* The United States of America on behalf of the North American Dredging Co. of Texas, claimant, vs. the United Mexican States.

The decision condemned any provision of a contract

"so phrased as to seek to preclude a government from intervening diplomatically or otherwise to protect its citizens whose rights of any nature have been invaded by another government in violation of the rules and principles of international law."

This, though it clarified the issue, did not invalidate the Mexican law.

The Claims Commissions created in 1923 are empowered to settle claims of damages of one country against the other. A claim before one of these commissions, however, even if maintained and resulting in an award of damages is not the same thing as the claimant having retained the property.

POSSIBILITY OF ARBITRAL SETTLEMENT

If the basic questions of principle involved

in the present controversy are not solved through direct negotiations it is suggested in various quarters that Article 21 of the Treaty of Guadalupe Hidalgo of 1848, confirmed in the Convention of 1908, between the United States and Mexico offers a means of justiciable settlement. Article 21 reads in part as follows:

"A resort shall not . . . be had, to reprisals, aggression or hostility of any kind . . . until the government of that (country) which deems itself aggrieved shall have maturely considered in the spirit of peace and good neighborhood whether it would not be better that such differences should be settled by the arbitration of commissioners appointed on each side or by that of a friendly nation. And should such course be proposed by either party it shall be acceded to by the other unless deemed by it altogether incompatible with the nature of the differences or the circumstances of the case."

ANNEX I.

EXCERPTS FROM TEXT OF PETROLEUM LAW

AS PASSED ON DECEMBER 18, 1925 AND PROMULGATED ON DECEMBER 31, 1925, BY
PUBLICATION IN THE *Diario Oficial*.

The petroleum industry includes: the discovery, reduction to possession (*captacion*), conveyance by pipe lines, and refining of petroleum.

Article 4. Mexicans and civil and commercial companies (*sociedades*) constituted in conformity with Mexican laws, may obtain petroleum concessions upon compliance with the provisions of this law. Foreigners, in addition to the foregoing obligation, must comply beforehand with what is provided in Article 27 of the present Political Constitution.

Article 8. Exploitation concessions will be granted upon application and give to the concessionaire the right to reduce to possession (*captar*) and enjoy (*aprovechar*) the petroleum. Priority of an application gives preference right, other circumstances being equal, over later applications. The Department of Industry, Commerce and Labor will grant said concessions and see to it that the obligations stipulated therein, in conformity with the following bases, are complied with:

- I. When the concessionaire of a petroleum claim is not the surface owner of the same, he must cede to the surface owner a minimum of five per cent. of the gross production by way of indemnity.
- II. Within the exploitation zone the concessionaire shall have the right to establish all installations which the extraction, conveyance and storage of petroleum may require.
- III. Outside of the conceded zone the holder of an exploitation concession shall have the right

to obtain concessions to lay pipe lines, build roads and make use of Federal waters upon compliance with the provisions of the relative laws.

- VI. Exploitation concessions in "new zone" shall give to concessionaires during such time as shall be fixed by the Board of Representatives

Article 1. The ownership (*dominio directo*) of all natural mixtures of carbons of hydrogen which are found in their natural deposits, whatever may be the physical condition thereof, is vested in (*corresponde a*) the Nation. In this law is understood by the word "petroleum" all the natural mixtures of hydrocarbons of which it is composed, which are associated with it, or are derived from it.

Article 2. The direct dominion of the Nation, to which the preceding article refers, is inalienable and imprescriptible, and only with the express authorization of the Federal Executive, granted as provided in (*en los terminos*) this present law and its regulations, may the works required by the petroleum industry be carried out.

Article 3. The petroleum industry is of public utility; wherefore it shall enjoy preference as to any utilization of the surface of the land and in all cases in which the necessities of said industry require (it), the expropriation or occupation of the surface shall be admissible (*procedera*), having regard to (*mediante*) the corresponding legal indemnity.

to which Fraction IV of the preceding article refers, the right to secure a discount in the production tax, which shall be fixed by the same Board, at the same time that it determines the limits of the explored zones;

- V. Exploitation of a conceded zone may not be interrupted, except for a cause which, in the judgment of the Department of Industry, Commerce and Labor, is a justifiable one;
- VI. The Federal Executive shall regulate the exploitation of wells so as to prevent their premature exhaustion; and,
- VII. The life of a concession shall be not more than thirty years. At its termination a concessionaire who has fulfilled all his obligations may obtain a new one covering the same zone. The Department of Industry, Commerce and Labor shall establish the number of Agencies sufficient for the reception and handling of the denouncements of petroleum claims (*fundos*) in places where said Agencies may be necessary. Within the zone granted for exploitation, exploration concessions may be granted only to holders of the former (*de las primeras*).

Article 11. Petroleum concessions on land whose surface dominion corresponds to the Nation, will be granted in the form prescribed by this Law, and the concessionaire shall pay the corresponding indemnity for the use of the surface, in accordance with the regulations which may be issued to that end, in addition to the participation of the Federal Exchequer of such per cent. of the gross products of exploitation as the respective concession specifies. It shall be established in the concession that the public services shall not be obstructed.

Article 14. The following rights will be confirmed without any cost whatever and by means of concessions granted in conformity with this Law:

- I. Those arising from (*que se deriven*) lands in

which works of petroleum exploitation were begun prior to May 1, 1917.

- II. Those arising (*que se deriven*) from contracts made before May 1, 1917 by the surface owner or his successors in title for express purposes of exploitation of petroleum. The confirmation of these rights may not be granted for more than 50 years computed in the case of Fraction I, from the time the exploitation works began, and in the case of Fraction II, from the date upon which the contracts were made.
- III. To owners of pipe lines and refiners who are at present operating by virtue of a concession or authorization issued by the Department of Industry, Commerce and Labor, and as to what has reference to said concessions or authorizations.

Article 15. Confirmation of the rights to which Articles 12 and 14 of this Law refer, shall be applied for within the period of one year, computed from the date of the going into effect of this Law; that date having passed, said rights shall be considered as renounced and the rights whose confirmation has not been applied for shall have no effect whatever against the Federal Government.

Article 17. Causes for the forfeiture of a concession are:

- I. Lack of actual (*regulares*) works in the form prescribed by this Law;
- II. Violation of the provisions of Article 5;
- III. Failure to make the guarantee deposit as established by Fractions II and VI of Article 7, and
- IV. Failure to pay the taxes of the Federation.

Article 18. Violations of this Law and its regulations which do not involve causes of forfeiture of the concession, will be punished by the Federal Executive with fines of from 100 to 5,000 pesos.

Article 22. The Federal Executive is empowered to issue all dispositions for the regulation of this law.

ANNEX II.

TEXT OF LAND LAW REGULATING SECTION 1 OF ARTICLE 27 OF THE MEXICAN CONSTITUTION OF 1917

AS PASSED DECEMBER 23, 1925, AND PROMULGATED BY PUBLICATION IN THE *Diario Oficial* ON JANUARY 21, 1926.

Article 1. No alien shall acquire direct ownership in lands and waters in a strip of one hundred kilometers along frontiers and of fifty on coasts nor be a shareholder in Mexican companies which may acquire such ownership in the same strip.

Article 2. In order that an alien may form part of a Mexican company which may have or may acquire ownership of lands, waters and their accessories, or concessions for the exploitation of mines, waters or combustible minerals in the territory of the Republic he shall satisfy the requirement set out in the same Fraction 1 of Article 27 of the Constitution, to wit: That of agreeing before the Department of Foreign Relations to consider himself national in respect of the part of the property which pertains to him in the company, and not to invoke, in respect thereof, the protection of his

Government with reference thereto under pain, in case of failing in the agreement, of losing for the benefit of the nation the property which he may have acquired or which he may acquire as a shareholder in the company in question.

Article 4. Foreign persons who may represent since prior to the going into effect of this law fifty per cent. or more of the total interest of any kind of companies owning rural property for agricultural purposes shall retain it until their death in the case of physical persons, or for ten years in the case of moral persons (corporations)

The provisions of this article shall not affect contracts of colonization concluded by the Federal Government prior to the going into effect of this law.

Article 5. The rights which are the object of the present law, not comprised in the foregoing article, and acquired legally by aliens prior to the going into effect thereof, shall be conserved by their present owners until their death.

Article 6. When an alien person should have to acquire by inheritance rights the acquisition of which might be prohibited to aliens by the law, the Department of Foreign Relations shall give permit in order that there may be made the adjudication and that there may be registered the respective deed. In case any alien person should have to have adjudicated to himself by virtue of a preexisting right acquired in good faith, a right to those which are prohibited to him by the law, the Department of Foreign Relations shall give the permit for such adjudication.

In both cases the permit shall be granted upon the condition of transferring the rights in question to a person with capacity under the law within a period of five years, counting from the date of the death of the author of the inheritance in the first case, or from the adjudication in the second.

Article 7. Aliens who may have any right of those which are the subject matter of this law, acquired before the going into effect of the same,

shall make a declaration before the Department of Foreign Relations within the year following the date of the promulgation of the present law, upon the understanding that if this is not done it will be considered that the acquisition was made subsequent to the promulgation of this law.

Article 8. Executed acts and contracts made against the prohibition contained in this law shall be void with full right. Failure to comply with Articles 4 and 6 shall give rise to the auction of the property indicated therein.

Article 9. This law does not repeal the restrictions placed by special laws on alien persons to acquire rights within the territory of the Republic.

Article 10. For the effects of this law there shall not be considered as alienation of properties the leases of immovable property for a term greater than ten years to the extent which may be strictly necessary for the establishments or services with an industrial, mining, petroleum or other non-agricultural object on the part of the enterprise without prejudice to the provision of the special laws.

Article 11. The Executive shall regulate the provisions of this law.

ANNEX III.

TEXT OF THE LAST PUBLISHED NOTE OF THE SECRETARY OF STATE TO THE MEXICAN MINISTER FOR FOREIGN AFFAIRS, DATED OCTOBER 30, 1926—AND THE MEXICAN REPLY

"Excellency: The note of your excellency, dated October 7, 1926, has received most careful consideration, and I have the honor to submit the following reply:

"1. My government observes that the Mexican government, while contending that the retroactive character of a law may not, of itself, in advance of actual confiscatory or otherwise injurious effects when applied, give rise to objection or be the subject of diplomatic representations, reiterates its adherence to the fundamental principle that acquired rights may not be impaired by legislation retroactive in character or confiscatory in effect.

"2. My government likewise notes the unqualified adherence of the Mexican government to the fundamental principle that rights of property of every description legally acquired are to be respected and guaranteed in conformity with the recognized principles of international law and of equity.

"3. My government has not failed to appreciate the gravity of the situation arising from the position taken by the Mexican government with respect to the negotiations of 1923. As my previous communications to your excellency have amply explained the declarations of the Mexican and of the American commissioners on that occasion, subsequently ratified by an exchange of notes between the two governments, constituted, in the view of my government, solemn and binding undertakings which formed the basis and moving consideration for the recogni-

tion of the Mexican government by this government.

"4. After a further review of the entire correspondence, and especially after a careful examination of your excellency's note of October 7, 1926, this government finds no occasion to modify any of the positions which it has heretofore taken, and desires to be understood as maintaining those positions with the utmost emphasis. Although they have all been clearly set forth in my previous communications, and therefore need not here be re-stated, I deem it appropriate in the light of the tenor and effect of Your Excellency's late note, to emphasize again the reservation made by the American commissioners and formally stated on the record by the Mexican commissioners, acting in behalf of their government, at the meeting of August 2, 1923, and to recall to mind the passage on that subject appearing in your excellency's note of March 27, 1926.

"My purpose in engaging upon this correspondence relating to the land law and the law concerning rights to certain products of the subsoil was, in a spirit of genuine good will and friendliness, to point out so clearly as to leave no room for misunderstanding the extremely critical situation affecting the relations between the two countries which would inevitably be created if those laws were enacted and enforced in such manner as to violate the fundamental principles of international law and of equity, and the terms and conditions of

the understanding arrived at in 1923. That purpose has been fulfilled, the issues have been plainly defined, and my government, in conclusion, reasserts that it expects the government of Mexico, in accordance with the true intent and purpose of the negotiations of 1923, culminating in the recognition of the government of Mexico by this government, to respect in their entirety the acquired property rights of American citizens, which have been the subject of our discussion, and expects the Mexican government not to take any action under the laws in question and the regulations issued in pursuance thereto, which would operate, either directly or indirectly, to deprive American citizenships of the full ownership, use and enjoyment of their said properties and property rights.

"Accept, your excellency, the renewed assurance of my highest consideration.

"FRANK KELLOGG."

REPLY OF MINISTER SAENZ

"Excellency: I have the honor to refer to your Excellency's note dated October 30 last, in reply to mine of the 7th of the same month reiterating in the first instance the conformity of my government with the two first propositions of the four therein set forth and they are as follows:

"1. Acquired rights cannot be prejudiced by legislation retroactive in character or confiscatory in its effects.

"2. Rights of property legally acquired must be respected and guaranteed in conformity with the recognized principles of international law and of equity.

"As for the third proposition my government has not discountenanced the conferences of 1923 and has only stated and repeated that these conferences did not have nor do they have, the force of a treaty, because for this purpose it would have been necessary to subject them to the constitutional laws of both countries, securing among other things the ratification of the respective Senates and that by

common accord our two governments agreed that the result of the said conferences would not be considered a condition for the renewal of diplomatic relations between Mexico and the United States.

"Finally, your excellency repeats the reservations made by the American commissioners and recognized by the Mexican government in the session of August 2, 1923. In this point my government, referring to the same session, points out that the Mexican commissioners reserved the rights of their government in conformity with its laws and with the principles of international law regarding lands in the terms which appear in the respective minutes, a reservation which has no less importance than that formulated by the American commissioners. With regard to the laws, namely, the organic law of Fraction 1 of Article 27 of the Constitution and that of petroleum, your excellency states that the American government expects that that of Mexico will respect in their entirety the rights of property acquired by American citizens, and will take no measures based upon the said laws and upon the respective regulations which may operate directly or indirectly to deprive American citizens of the complete ownership, use and enjoyment of the said properties and rights of property.

"My government on its part expects that your excellency will indicate the concrete cases in which recognized principles of international law may have been violated or may be violated in disregard of legitimate interests of American citizens, since in such cases it will be disposed to repair such violations.

"The foregoing declaration shows that there can be no justified motive whatever for misunderstanding between the government of Mexico and that of the United States with regard to the matters which have been the subject of our correspondence.

"I renew to your excellency the expression of my highest consideration.

"AARON SAENZ."

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